

401 Water Quality Certifications

Presented by

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Central Coast Regional Water Quality Control Board

Topics for Today

- Water Board Jurisdiction
- The Application Process
- Common Application Deficiencies
- Avoidance and Minimization
- Successful Mitigation Examples
- Takeaways

A Little History

- Serious water quality issues arise in the 1950s and 1960s



Regulatory Authority

- California passes the Porter-Cologne Water Quality Control Act
- U.S. Congress passes the Clean Water Act

401 Water Quality Certifications

- Projects that impact waters of the U.S.
- Section 404 of the Clean Water Act
 - Triggers the need to obtain a Section 401 Water Quality Certification for dredge and fill activities
- Section 401 of the Clean Water Act
 - Once triggered, additional waters (waters of the State) may become a consideration in the Certification decision

Certification

- Certifying that a project complies with water quality standards
 - Designated Beneficial Uses
 - Water Quality Objectives
 - Anti-Degradation Policy

Water Board Jurisdiction

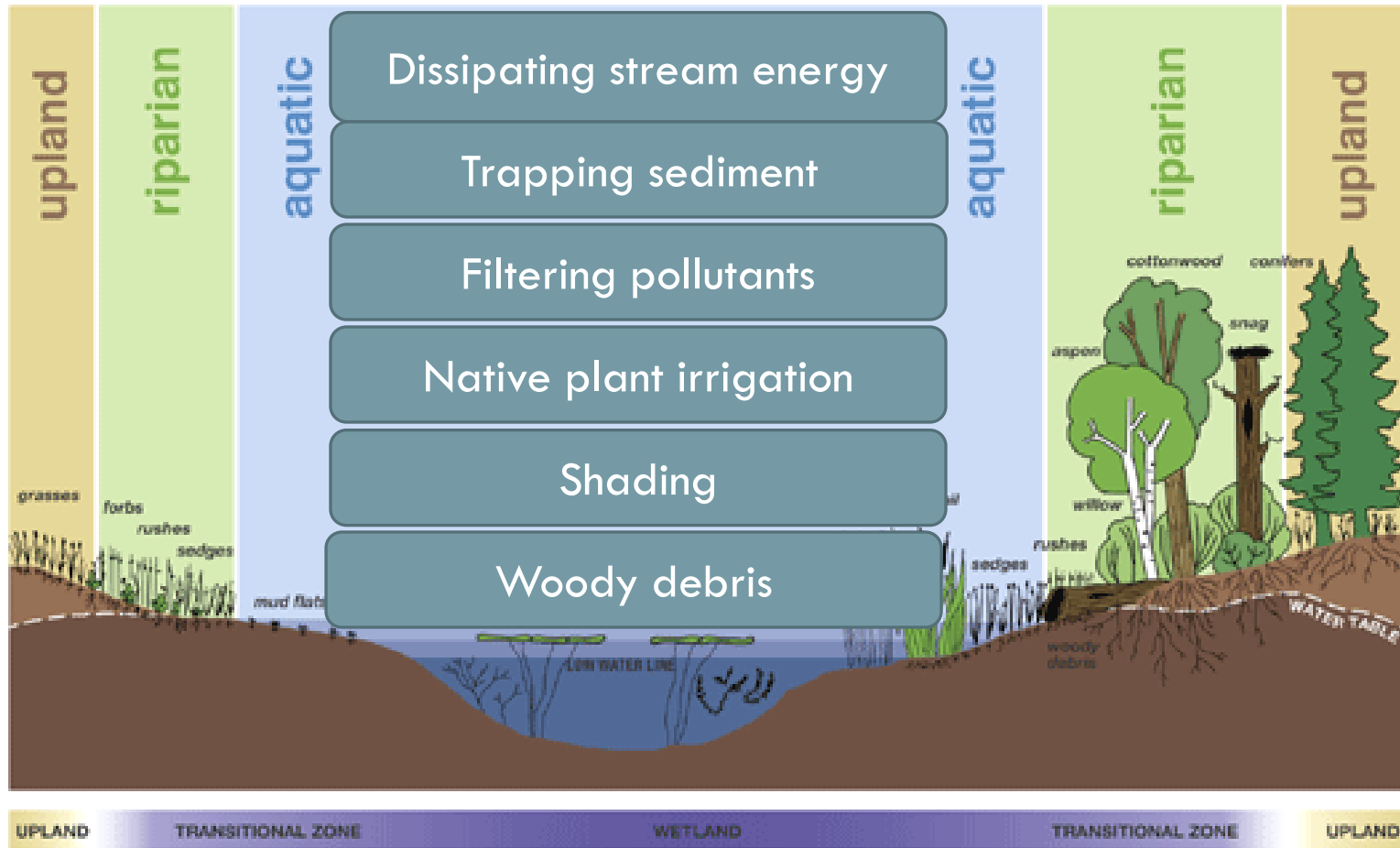
- Authority to consider all potential water quality impacts of the project
- Regulates the entire project – we are certifying that the project complies with water quality standards
- Considerations can be quite broad as long as they relate to water quality

From a Watershed-Based Perspective



Courtesy of wi.water.usgs.gov

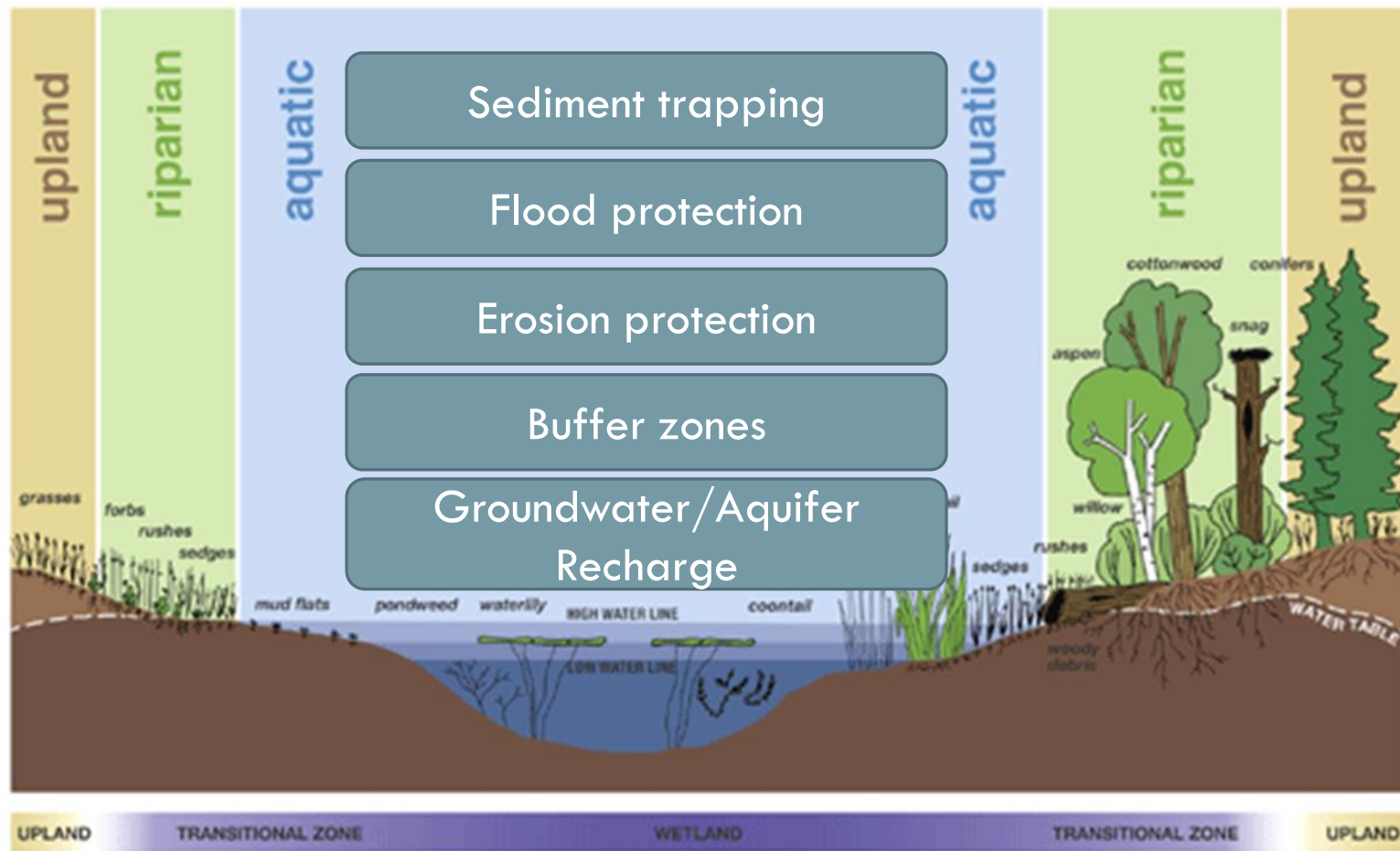
Riparian Habitat



Courtesy of microbewiki.kenyon.edu

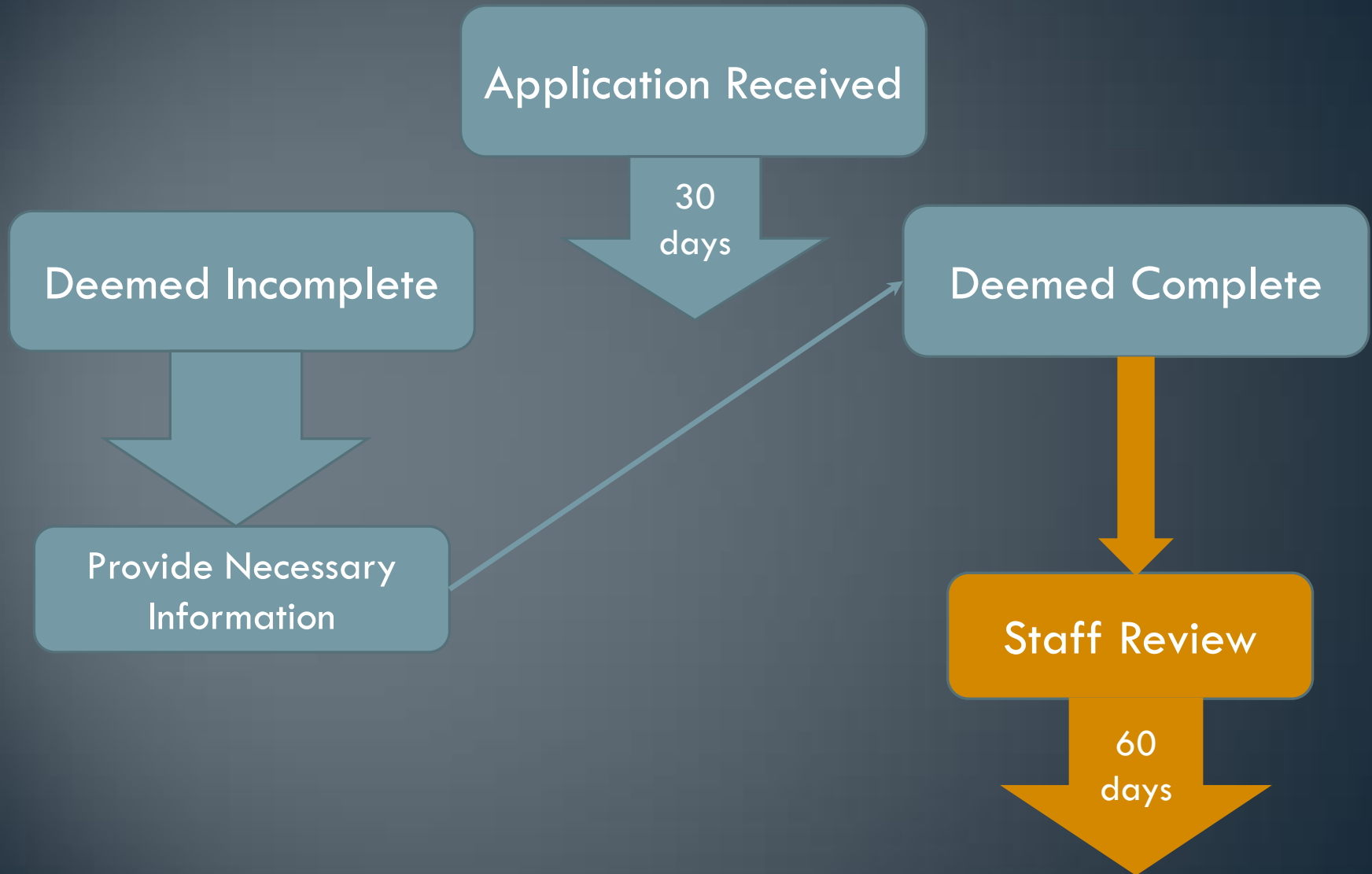
Wetland Habitat

A Typical Wetland



Courtesy of microbewiki.kenyon.edu

401 Application Process



Request for Supplemental Information



Staff Determination

Proposed project is
protective of water
quality



Issue 401 Certification

Proposed project is not
protective of water
quality



Issue Technically
Conditioned 401
Certification

-or-

Denial

Common Application Deficiencies

Avoidance of Impacts

- Since avoidance is the best way to protect waters, it is our standard practice to seek avoidance first
- We are receiving applications where avoidance does not seem to have been seriously considered
- Projects that do not demonstrate avoidance take longer to certify, expending applicant, consultant, and Water Board staff time

Avoidance Protects Waters

- Goal is to reduce impacts to those that are absolutely necessary
- Avoidance is not biological mitigation measures
- Avoiding impacts is the best way to protect waters of the State
- Degradation or destruction of waters may represent an irreversible loss of valuable aquatic resources

Mitigation Success is Uncertain

- Mitigation of lost waters or functions is difficult and may not always be entirely successful
- Mitigation is often not implemented or completed according to plan
- The higher quality the resource, the greater the degree of difficulty in replacing the impacted habitat

Benefits to Avoidance

- Avoidance can lower costs such as
 - Fees
 - Mitigation costs
 - Monitoring costs
 - Reporting costs
- Complete avoidance can avoid permitting altogether
- Avoidance can enhance projects by preserving waters that become project amenities by providing open space and natural habitat

Complete Project Description

- Impacts stated by water body type, e.g., streambed, riparian, wetland (in acres and linear feet)
- Total project size (in acres and linear feet)
- Detailed and concise description of project activities
- Description of avoidance and minimization efforts and mitigation for the loss or significant adverse impacts to waters of the State

Complete Impacts Reporting

- Impacts to all water bodies (above and below the Ordinary High Water Mark)
- Riparian impacts are considered impacts to waters of the State
- Non-jurisdictional wetland impacts are considered impacts to waters of the State

Compensatory Mitigation Proposal

- Compensatory mitigation almost always requires the preparation and submission of a final **Mitigation and Monitoring Plan**
- Compensatory mitigation should **align with stated impacts** (e.g., in-kind)

New 401 Certification Template

- Scheduled to be released very soon
- New application is coming, but will not be ready prior to release of the new Certification
- Will require staff to collect more information
 - Compensatory mitigation type (establishment, re-establishment, rehabilitation, enhancement, preservation)

Types of Compensatory Mitigation

- Establishment: Results in a gain of aquatic resource area and function (+/+)
- Re-establishment: Results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions (+/+)

Types of Compensatory Mitigation

- **Rehabilitation**: Results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area (0/+)
- **Enhancement**: Results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area (0/+)

Types of Compensatory Mitigation

- Preservation: Does not result in a gain of aquatic resource area or functions (0/0)

Compensatory Mitigation Ratios

- Every project is unique
- Condition of the impacted water body
- Type of water body
- Onsite versus offsite mitigation
- Type of mitigation

Common Application Deficiencies

- **Copies of Other Permit Applications**
 - Need to review the entire project
- **CEQA Compliance Documentation**
 - Need final CEQA documentation (Notice of Determination) prior to issuing a Certification
- **Applicant and Agent Contact Information**
 - The applicant or the agent can sign the application

Mitigation and Monitoring Plans – Common Deficiencies

- Impacts and Compensatory Mitigation Don't Align
- Insufficient Justification for Site Selection
- Avoidance and Minimization Efforts Not Addressed
- Low Success Criteria Levels
- Maintenance and Preservation of Mitigation Site Not Addressed
- Inadequate Monitoring and Reporting Requirements
- Inadequate Photo Documentation of pre-Project Site Conditions

Annual Monitoring Reports – Common Deficiencies

- Project Site

- Adequate Description of Project Activities (actual impacts)
- Before and After Photo Documentation
- Corrective Actions Taken
- Late Submissions (due May 31st)

- Mitigation Site

- Reporting of Actual Impacts and Compensatory Mitigation Implementation (in acres and linear feet)
- Before and After Photo Documentation
- Corrective Actions To Be Taken (if necessary)
- Late Annual Report Submissions (due May 31st)

Successful Mitigation Examples

Pinkham Bridge Replacement

2011



2016



Route 46 Wetland Mitigation Site

2011



2016



Haskell's Landing Creek and Riparian Enhancement

2012



2016



Takeaways ...

- Impacting a water body is a privilege, not a right
- A complete application makes the process go more smoothly and quickly
- Consistency within project documents is important
- Timely responses move the process forward

And More Takeaways ...

- Applicant must demonstrate they have avoided and minimized first and foremost, and mitigated for all unavoidable impacts of the project
- “No Net Loss” wetland objectives must be met for every project

The top half of the slide features an abstract background composed of numerous thin, vertical lines in various shades of blue and grey, creating a textured, rain-like effect. A solid blue horizontal band spans the width of the slide, serving as a background for the text.

Thank You – Questions?

Resources

Contact Information

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Helpful Links

- Central Coast Water Board 401 Water Quality Certification web page:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/401wqcert/index.shtml

- Central Coast Water Board Basin Plan

http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/docs/basin_plan_2011.pdf

Types of Compensatory Mitigation

- Establishment (or Creation)
 - The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at the site. Establishment results in a gain of aquatic resource area and function. (+/+)
- Re-establishment
 - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (+/+)

Aquatic Resource Area/Aquatic Resource Function
e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Types of Compensatory Mitigation

- Rehabilitation

- The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area. (0/+)

- Enhancement

- The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area (0/+)

Aquatic Resource Area/Aquatic Resource Function

e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Types of Compensatory Mitigation

- Preservation
 - The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions. (0/0)

Aquatic Resource Area/Aquatic Resource Function
e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Mitigation and Monitoring Plans - Content

- Introduction
 - Project Location and Description
 - Mitigation Project Purpose
 - Responsible Parties
- Environmental Setting
 - Impacted Areas
 - Mitigation Site

Mitigation and Monitoring Plans - Content

- Sensitive Biological Resources
- Required Permits
- Mitigation Goals and Objectives
- Site Selection and Justification
- Mitigation Work Plan

Mitigation and Monitoring Plans - Contents

- Performance Standards
- Monitoring and Reporting
- Adaptive Management
- References
- Figures and Tables
- Photographs

Annual Monitoring Reports (Mitigation Site) - Contents

- Introduction
- Project Summary
- Compensatory Mitigation Site Information
- Summary of Restoration Activities
- Discussion of Mitigation Site Status
- Corrective Actions
- Conclusion
- Photo Documentation (Before and After)
- Location Figures

Annual Monitoring Reports (Project Site) - Content

- Introduction
- Project Summary
- Summary of Project Activities
- Discussion of Project Site Status
- Corrective Actions
- Conclusion
- Photo Documentation (Before and After)
- Location Figures